

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MICHAEL J. SHORT, TRUSTEE, et al.,)	
Plaintiffs,)	
)	
vs.)	1:09-cv-0931-SEB-TAB
)	
HIGHWAY SAFETY SERVICES, INC.,)	
Defendant.)	

**REPORT AND RECOMMENDATION
ON PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE**

This matter is before the Court on Plaintiffs' motion for order to show cause. [Docket No. 41.] Plaintiffs contend that Defendant failed to pay contributions as required by the parties' collective bargaining agreement and as mandated by this Court's May 7, 2010, order granting a permanent injunction. [Docket No. 13.] The Court held a hearing on Plaintiffs' motion on August 7, 2012. Plaintiffs appeared by counsel and Tim Patrick, account manager of the fund. Patrick testified that Defendant's outstanding obligation to the fund is \$24,803.26. Defendant was not represented by counsel at the hearing. However, Defendant's president, Mike Madrid, and David Goldman, managing director of restructuring firm Goldman Venture II, appeared and the Court permitted them to testify. These witnesses did not dispute that Defendant owed Plaintiffs \$24,803.26 in unpaid contributions.

As a preliminary matter, the Court must consider whether it has continuing jurisdiction to consider Plaintiffs' motion. As the docket reflects, the Court has entered a judgment in Plaintiffs' favor (which Plaintiffs stated at the hearing has been fully satisfied), and this case is now closed. Nevertheless, the Court previously issued a permanent injunction against Defendant which, among other things, requires Defendant to pay all future contributions on or before the

due date proposed in the collective bargaining agreement. [Docket No. 13.] Given this permanent injunction, the Court is satisfied that it has jurisdiction to address Defendant's continuing violation of the collective bargaining agreement "upon the proper showing of the Plaintiffs' entitlement to such relief." *DeGraw v. Garza Maintenance & Constr., LLC*, No. 1:10-CV-0534-SEB-DML, 2010 WL 2346671, at *1 (S.D. Ind. June 7, 2010).

As noted above, the undisputed evidence presented at the August 7 hearing establishes that Defendant failed to pay required contributions to Plaintiffs for various periods since 2011, totaling \$24,803.26.¹ Accordingly, the Magistrate Judge recommends that Plaintiffs' motion for order to show cause [Docket No. 41] be granted, and a second supplemental judgment be entered in favor of Plaintiffs and against Defendant for \$24,803.26. Given Defendant's ongoing failure to satisfy its obligations under the collective bargaining agreement, as well as the importance of ensuring that fund contributions are made, Plaintiffs should be entitled to execute immediately on this second supplemental judgment upon the adoption of this report and recommendation and an entry of the judgment. Any objections to the Magistrate Judge's report and recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1). Failure to file timely objections within fourteen days after service shall constitute waiver of subsequent review absent a showing of good cause for such failure.

Dated: 08/09/2012



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

¹Plaintiffs' proposed order requests \$314.74 in interest, but Plaintiffs presented no evidence or argument as to their entitlement to interest.

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